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(1) Documents and materials in the files of individual Commissioners or employees of the Commission that do not constitute a basis for the Commission's decisions because they were not circulated to the Commission and were not referenced in documents that were circulated to the Commission;

(2) Transcripts or audio tapes of Commission discussions other than transcripts or audio tapes of oral hearings pursuant to 11 CFR 9038.2(c)(2), although such transcripts or tapes may be made available under 11 CFR parts 4 or 5; or

(3) Documents properly subject to privileges such as an attorney-client privilege, or items constituting attorney work product.

(c) The administrative record identified in paragraph (a) of this section is the exclusive record for the Commission's determinations under 11 CFR part 9033, §§ 9034.5, 9036.5 and 9038.2 and part 9039.

[60 FR 31888, June 16, 1995]

PART 9039—REVIEW AND INVESTIGATION AUTHORITY

Sec.

9039.1 Retention of books and records.
9039.2 Continuing review.
9039.3 Examinations and audits; investigations.

AUTHORITY: 26 U.S.C. 9039.

SOURCE: 56 FR 35949, July 29, 1991, unless otherwise noted.

§ 9039.1 Retention of books and records.

The candidate and his or her authorized committee(s) shall keep all books, records and other information required under 11 CFR 9033.11, 9034.2 and part 9036 for a period of three years pursuant to 11 CFR 102.9(c) and shall furnish such books, records and information to the Commission on request.

§ 9039.2 Continuing review.

(a) In reviewing candidate submissions made under 11 CFR part 9036 and in otherwise carrying out its responsibilities under this subchapter, the Commission may routinely consider information from the following sources:

(1) Any and all materials and communications which the candidate and his or her authorized committee(s) submit or provide under 11 CFR part 9036 and in response to inquiries or requests of the Commission and its staff;

(2) Disclosure reports on file with the Commission; and

(3) Other publicly available documents.

(b) In carrying out the Commission's responsibilities under this subchapter, Commission staff may contact representatives of the candidate and his or her authorized committee(s) to discuss questions and to request documentation concerning committee activities and any submission made under 11 CFR part 9036.

§ 9039.3 Examination and audits; investigations.

(a) *General.* (1) The Commission will consider information obtained in its continuing review under 11 CFR 9039.2 in making any certification, determination or finding under this subchapter. If the Commission decides by an affirmative vote of four of its members that additional information must be obtained in connection with any such certification, determination or finding, it will conduct a further inquiry. A decision to conduct an inquiry under this section may be based on information that is obtained under 11 CFR 9039.2, received by the Commission from outside sources, or otherwise ascertained by the Commission in carrying out its supervisory responsibilities under the Presidential Primary Matching Payment Account Act and the Federal Election Campaign Act.

(2) An inquiry conducted under this section may be used to obtain information relevant to candidate eligibility, matchability of contributions and repayments to the United States Treasury. Information obtained during such an inquiry may be used as the basis, or partial basis, for Commission certifications, determinations and findings under 11 CFR parts 9033, 9034, 9036 and 9038. Information thus obtained may also be the basis of, or be considered in connection with, an investigation under 52 U.S.C. 30109 and 11 CFR part 111.

(3) Before conducting an inquiry under this section, the Commission will attempt to obtain relevant information under the continuing review provisions of 11 CFR 9039.2. Matching payments will not be withheld pending the results of an inquiry under this section unless the Commission finds patent irregularities suggesting the possibility of fraud in materials submitted by, or in the activities of, the candidate or his or her authorized committee(s).

(b) *Procedures.* (1) The Commission will notify the candidate of its decision to conduct an inquiry under this section. The notice will summarize the legal and factual basis for the Commission's decision.

(2) The Commission's inquiry may include, but is not limited to, the following:

(i) A field audit of the candidate's books and records;

(ii) Field interviews of agents and representatives of the candidate and his or her authorized committee(s);

(iii) Verification of reported contributions by contacting reported contributors;

(iv) Verification of disbursement information by contacting reported vendors;

(v) Written questions under order;

(vi) Production of documents under subpoena;

(vii) Depositions.

(3) The provisions of 52 U.S.C. 30109 and 11 CFR part 111 will not apply to inquiries conducted under this section except that the provisions of 11 CFR 111.12 through 111.15 shall apply to any orders or subpoenas issued by the Commission.

(4) If, at the close of the inquiry, the Commission determines that no action or no further action is warranted, the Commission shall so notify the candidate. If the inquiry results in an adjustment to the amount of certified matching funds, the procedures set forth at 11 CFR 9036.5 or 9038.1 shall be followed, as appropriate. If the inquiry coincides with an audit undertaken pursuant to 11 CFR 9038.1, the information obtained in the inquiry will be utilized in making the repayment determination. If the inquiry results in an initial or additional repayment determination, the procedures set forth at 11 CFR 9038.2, 9038.4, and 9038.5 shall be followed.

[56 FR 35949, July 29, 1991; 56 FR 42380, Aug. 27, 1991; 60 FR 31888, June 16, 1995; 79 FR 77852, Dec. 29, 2014]

PARTS 9040–9099 [RESERVED]